

AMENDED IN SENATE MAY 6, 2008  
AMENDED IN SENATE APRIL 14, 2008

**SENATE BILL**

**No. 1598**

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**Introduced by Senator Padilla**

February 22, 2008

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An act to add Article 1.5 (commencing with Section 104497) to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, relating to smoking.

LEGISLATIVE COUNSEL'S DIGEST

SB 1598, as amended, Padilla. Tenancies: prohibition of smoking of tobacco products.

Existing law generally regulates the use and sale of tobacco products, and prohibits the smoking of tobacco products in various locations, including, but not limited to, all enclosed spaces of employment, in or around state buildings, and playgrounds and tot lots, subject to certain exceptions.

Existing law separately regulates the terms and conditions of residential tenancies.

This bill would authorize a landlord of a residential dwelling unit, or his or her agent, to prohibit, in accordance with specified conditions, the smoking of a cigarette, as defined, or other tobacco products, as described, on the property or in any building or portion thereof that is located on the property. The bill would also provide that a violation of a smoking prohibition imposed pursuant to these provisions would constitute a material violation of the rental agreement, as described.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2 following:

3     (a) More than 440,000 people die in the United States from  
4 tobacco-related diseases every year, making it the nation's leading  
5 cause of preventable death. More than 40,000 people die from  
6 tobacco-related diseases every year in California.

7     (b) The State Department of Public Health has estimated that  
8 86 percent of adult Californians are nonsmokers. Secondhand  
9 smoke is responsible for an estimated 38,000 deaths among  
10 nonsmokers each year in the United States, which includes 3,000  
11 lung cancer deaths and 35,000 deaths due to heart disease, ~~which~~  
12 ~~has proven to cause~~ and cancer in humans.

13     (c) Secondhand smoke exposure adversely affects fetal growth  
14 with elevated risk of low birth weight and increased risk of Sudden  
15 Infant Death Syndrome (SIDS) in infants of mothers who smoke.

16     (d) Secondhand smoke exposure causes as many as 300,000  
17 children in the United States under the age of 18 months to suffer  
18 lower respiratory tract infections, such as pneumonia and  
19 bronchitis; exacerbates childhood asthma; and increases the risk  
20 of acute, chronic, middle-ear infections in children.

21     (e) The United States Environmental Protection Agency has  
22 classified secondhand smoke as a group A carcinogen, the most  
23 dangerous class of carcinogen.

24     (f) The United States Surgeon General has concluded that there  
25 is no risk-free level of exposure to secondhand smoke.

26     (g) The California Air Resources Board has put secondhand  
27 smoke in the same category as the most toxic automotive and  
28 industrial air pollutants by categorizing it as a toxic air contaminant  
29 for which there is no safe level of exposure.

30     (h) The California Environmental Protection Agency has  
31 included secondhand smoke on the Proposition 65 list of chemicals  
32 known to the State of California to cause cancer, birth defects, and  
33 other reproductive harm.

34     (i) More than 30 percent of California's housing is multiunit  
35 residences, such as apartments and condos.

36     (j) A large majority of Californians support laws that would  
37 prohibit smoking in outdoor common areas of multiunit housing,

1 and that would require that apartment buildings offer nonsmoking  
2 sections of units within those apartments.

3 SEC. 2. Article 1.5 (commencing with Section 104497) is  
4 added to Chapter 1 of Part 3 of Division 103 of the Health and  
5 Safety Code, to read:

6  
7 Article 1.5. Smoking of Tobacco Products in Residential Rental  
8 Units  
9

10 104497. (a) Notwithstanding any other provision of law, a  
11 landlord of a residential dwelling unit, as defined in subdivision  
12 (c) of Section 1940 of the Civil Code, or his or her agent, may  
13 prohibit the smoking of a cigarette, as defined in subdivision (d)  
14 of Section 104556, or other tobacco products, as that term is used  
15 in Section 6404.5 of the Labor Code, on the property or in any  
16 building or portion thereof, including any dwelling unit, other  
17 interior or exterior area, or the premises on which the same is  
18 located, in accordance with this article.

19 (b) (1) Every lease or rental agreement entered into on or after  
20 January 1, 2009, for a residential dwelling unit located on property  
21 on any portion of which the smoking of tobacco products has been  
22 prohibited pursuant to this article, shall include a provision that  
23 specifies the areas on the property in which smoking is prohibited.

24 (2) For lease or rental agreements entered into before January  
25 1, 2009, a prohibition against tobacco smoking in any portion of  
26 a property in which smoking was previously permitted shall  
27 constitute a change of terms of tenancy, requiring adequate notice  
28 under subdivision (a) of Section 827 of the Civil Code.

29 (c) (1) This section shall not apply to the inside of the tenant's  
30 dwelling unit for as long as the tenant continues to reside in the  
31 same unit, if the rental agreement was executed before a prohibition  
32 of smoking of tobacco products was imposed pursuant to this  
33 article. However, the tenant shall not be exempt from prohibitions  
34 against tobacco smoking imposed pursuant to this article that affect  
35 other areas of the property.

36 (2) A prohibition of smoking of tobacco products imposed  
37 pursuant to this article shall apply to any portion of the property  
38 that is located in a city, county, or city and county that has in effect  
39 any control or system of control on the price at which

1 accommodations may be offered for rent if both of the following  
2 are true:

3 (A) The rental agreement was executed after January 1, 2009.

4 (B) The prior tenancy ended in either a voluntary vacancy or  
5 eviction for cause, as permitted by the local ordinance, charter  
6 provision, rule, or regulation.

7 (d) A violation of a prohibition against tobacco smoking that  
8 has been imposed pursuant to this article shall constitute a material  
9 violation of the rental agreement, allowing the owner to issue a  
10 three-day notice pursuant to subdivision~~(2)~~ (3) of Section 1161  
11 of the Code of Civil Procedure.

12 (e) Notwithstanding any provision of this article, a city, county,  
13 or city and county may enact an ordinance, regulation, or policy  
14 to prohibit the smoking of cigarettes or tobacco products on the  
15 property, or in any building, or portion thereof, including any  
16 dwelling unit, and areas adjacent to the unit, located on the property  
17 within its jurisdiction.